Supreme Court, U.S.
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In The

Supreme Court of the United States

LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY; FRANKLIN E. WHITE, MTA Chief Executive Officer in his Individual and Official Capacities; JOSEPH NMI DREW, MTA Acting Chief Executive Officer in his Individual and Official Capacities,

Petitioners,

vs.

LABOR/COMMUNITY STRATEGY CENTER; BUS RIDERS UNION; SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE OF GREATER LOS ANGELES COUNTY; KOREAN IMMIGRANT WORKERS ADVOCATES; MARIA GUARDADO; RICARDO ZELADA; NOEMI ZELADA; PEARL DANIELS; HENRY FREDERICK RAMEY, JR.; O. HOWARD WATTS; WILLIAM TUT HAYES; VICTOR DIBAS,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Petitioners are the Los Angeles County Metropolitan Transportation Authority ("MTA") and the MTA's named executive officers. The MTA is California's agency statutorily charged with planning, constructing, financing and operating Los Angeles County's public transportation systems, *e.g.*, freeways, highways, buses, subways and trains. Cal. Pub. Util. Code §§ 130050.2, 130300, 130301. This case arises from proceedings initiated by respondents to enforce a consent decree ("Decree") following settlement of their civil rights action. No constitutional or statutory violation was ever conceded or adjudicated.

1. Did the Ninth Circuit disobey *United States v. ITT Continental Baking Co.*, 420 U.S. 223, 95 S. Ct. 926, 43 L. Ed. 2d 148 (1975), and *United States v. Armour & Co.*, 402 U.S. 673, 91 S. Ct. 1752, 29 L. Ed. 2d 256 (1971), by construing the Decree solely as a judgment rather than as a contract for enforcement purposes thereby creating conflicts with the other Circuits?

2. Did the Ninth Circuit disobey this Court's limitations on federal courts' power to intrude into the discretionary authority committed to state agencies by ordering the MTA to buy hundreds of buses that the Decree did not require and that the MTA had insufficient funding to buy and to operate while simultaneously meeting its statutory obligations to users of its transportation systems other than bus riders?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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OPINIONS

The opinion of the United States Court of Appeals for the Ninth Circuit is reported as *Labor/Community Strategy Center, et al. v. Los Angeles County Metropolitan Transportation Authority, et al.*, 263 F.3d 1041 (9th Cir. 2001) (Appendix A hereto). The Order denying petitioners' Petition for Rehearing and for Rehearing en Banc is unreported. (Appendix B.) The district court's orders are unreported. (Appendix C.) The special master's "order" and his modification thereof is unreported. (Appendices D and E.) The Consent Decree is unreported. (Appendix F.)

JURISDICTION

The opinion of the Court of Appeals was filed on August 31, 2001. Petitioners timely filed their Petition for Rehearing and Rehearing en Banc, which was denied by Order filed October 16, 2001. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Pertinent federal and California statutes are set forth in Appendix G.

STATEMENT OF THE CASE

Introduction. The lower courts' misinterpretation of the Decree and the mandatory injunction based thereon adversely affects millions of people in Los Angeles

County who rely on the MTA's multiple public transportation systems every day. In reaching their erroneous conclusions, the lower courts have failed to follow this Court's decisions requiring consent decrees to be interpreted as contracts and failed to heed this Court's restrictions on the power of federal courts to substitute their discretion for the discretion committed to the executive and legislative branches of state governments. The mandatory injunction imposed below threatens the ability of the MTA to fulfill its federal and State statutory obligations by imperiling federal and State funding which is the lifeblood of the MTA.

Institution of Litigation. In August 1994, respondents (collectively, the Bus Riders Union ["BRU"]) filed a civil rights action against the MTA and its named officers charging violation of 42 U.S.C. §§ 1981, 1983 and of Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d. Respondents claimed that the MTA disparately treated bus riders (a majority of whom were people of color) and train riders (a majority of whom were white) by spending a disproportionate amount of its revenues on rail systems as opposed to bus service and by providing poorer equipment and service to minority riders than to white riders.[1]

Settlement Agreement Embodied in the Decree. In 1996, shortly before trial, the parties entered into a settlement agreement that was thereafter embodied in the Decree. Mr. Donald Bliss, a private lawyer, was the mediator who

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[1] The MTA produced substantial evidence in the district court that the assumed disparity in the treatment of people of color and white bus and train riders was nonexistent. Respondents introduced no contrary evidence.

assisted the parties in reaching the settlement. The Decree named him as a special master to try to resolve disputes arising from the Decree.

Because the MTA is a highly regulated public agency with multiple federal and State obligations, the Decree expressly limited the MTA's responsibilities thereunder to those which are consistent with its "other statutory responsibilities and obligations." (App. F at 174a.) The Decree also limited the MTA's expenditures for bus services to "bus-eligible revenue realized in excess of funds already specifically budgeted for other purposes." (*Id.* at 174a.)

The Pivotal Issue Before the Special Master. In 1998, disputes arose which the parties could not settle. The critical issue was whether the MTA had failed to comply with the provisions of the Decree obliging the MTA to reduce the number of bus standees during rush hours. (App. F at 175a-177a.) The Decree set "load factor targets" for the MTA to meet in reducing standees over time. (*Id.* at 175a.) A "load factor target" is a term of art in the bus transit industry which is used by specialists to estimate the number of buses that will be needed to accommodate anticipated passenger demand for service on ordinary days.[2] Those goals are defined as averages over 20-minute peak periods. The averaging component means that during measurement periods in rush hours, the MTA can have some buses that exceed the target without violating

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[2] Load factor targets are also used by those managing bus transit systems in preparing budgets and as performance measures. The terminology was taken directly from the MTA's then existing "Consolidated Service Transit Policy."

the Decree. These goals are not and cannot be certitudes because they are affected by multiple variables over which the transit agency has no control; *e.g.*, traffic jams, freeway accidents, unanticipated mechanical failures, bus drivers' illnesses, bad weather and passengers' own choices.

The Decree never required the MTA to buy a bus whenever a target was missed. The Decree specifically preserved to the MTA its discretion as to how the targets were to be met, and the MTA promised to "plan to make available sufficient additional buses and other vehicles" to meet these target load factors. (App. F at 176a.) It agreed to prepare a public report each fiscal year setting forth its plan to meet the targets while "recognizing that changes in ridership, fares, the economy and other factors may require modifications to the plan." (*Id.* at 176a.) In deciding how to meet the standee reduction goals, the Decree was explicit that bus financing was to be "consistent with MTA's other statutory responsibilities and obligations. . . . " (*Id.* at 174a.) If the MTA did not reach a goal, it promised to meet the target as soon as possible and to reallocate sufficient funds to meet the next target. (*Id.* at 177a.)

As required by the Decree (*id.* at 176a), the MTA presented its 1998 Load Factor Remediation Plan ("LFRP") to Mr. Bliss, contending that its LFRP (which was being implemented) complied with the Decree for the then current year and would comply with its next incremental standee reduction goal. The Decree was explicit that Mr. Bliss' authority on the load reduction issue was limited to deciding whether the MTA had met the current standee reduction goals and whether it had

allocated sufficient resources to meet the next target. (App. F at 177a.) Nothing in the Decree required the MTA to buy buses if targets were missed; targets could also be met by vehicles other than buses, such as vans or taxis.

The MTA produced declarations, documents and data collected between November 1997 through September 1998 to substantiate its claim that it was meeting and would meet its obligations under the Decree. Mr. Bliss took no evidence to interpret the Decree, nor did he take any evidence regarding the MTA's financial ability to reach its standee reduction goals beyond the stretch objectives of its own LFRP.

The Special Master's Erroneous Conclusion and "Order." Mr. Bliss' conclusion that the LFRP was inadequate was based on his construing the Decree's load factor targets as mathematically precise requirements that the MTA had to achieve every day on every covered line under all conditions and on his assumption that the LFRP did not provide enough buses to meet the targets as he construed that terminology.[3] He disregarded provisions of the Decree with respect to MTA's capacity to finance and operate such an expanded fleet, and he made no finding about its ability to comply with its other statutory obligations if it were forced to exceed its LFRP.

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[3] As a mediator negotiating the settlement, Mr. Bliss may have intended the load factor targets to be mathematical certitudes for ease in finding violations, but his intent is irrelevant. The parties' intent controls; consent decrees "should be construed basically as contracts," although they are also judgments. *United States v. ITT Continental Baking Co.*, 420 U.S. at 236-37; *United States v. Armour & Co.*, 402 U.S. at 681-82.

Although nothing in the Decree purported to confer on Mr. Bliss the equitable powers of federal courts, he issued an "order" requiring the MTA to buy 532 more buses than the agency's LFRP provided. Mr. Bliss disregarded the explicit provisions of the Decree leaving to the MTA's discretion the manner of meeting the targets, and he also disregarded the terms of the Decree stating that the targets could be met by vehicles other than buses. (App. F at 176a.)

The MTA requested Mr. Bliss to clarify and to modify his recommendations on the grounds, *inter alia*, that he had prejudicially erred in interpreting the Decree and that his authority thereunder did not include the power to issue a mandatory injunction. On May 14, 1999, Mr. Bliss slightly modified his "order" by reducing the number of mandatory bus purchases from 532 to 481. (App. E at 157a-158a.)

Proceedings Before the District Court. The district court granted the MTA's request for a hearing to review Mr. Bliss' "order." The court received extensive oral and documentary evidence; it also received briefs and heard oral argument. The MTA produced substantial evidence that it was in compliance with the Decree as properly interpreted and that it would meet the next target by implementing its LFRP. It produced uncontradicted evidence that (1) the term "load factor target" is a term of art in the transit industry which is a goal, not a precise measurement; (2) the MTA did not have the financial ability to buy and put into service more buses than its LFRP provided while simultaneously meeting its statutory obligations to the users of its other transportation facilities and services; (3) it could not obtain all the required federal

and State prior approvals necessary to further expand its fleet; and (4) enforcement of Mr. Bliss' "order" jeopardized the MTA's existing and future federal and State funding sources.

The MTA's evidence was uncontroverted that the MTA had then allocated to the bus system virtually *all* bus-eligible funds. Its projected deficits for the fiscal years 2001 to 2004 were between $118 million and $197 million alone without the mandated bus purchases. If Mr. Bliss' bus purchasing "order" were enforced, it would require further capital funding of approximately $115.8 million and operating funds of $97 million over 5 years.[4] The MTA was unable to identify any source of operating funds necessary for Mr. Bliss' expansion of its permanent fleet; the mandated increase in its fleet would increase the MTA's projected deficit to an unmanageable and irresponsible level. The BRU's opposition consisted of speculation that the MTA might have been able to find more federal and State funding if it had tried harder.[5]

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[4] At the time of the district court hearing, the MTA was spending approximately 44% of its total capital and operating budget for fiscal year 2000 on its bus system. Rail services consumed 22% of its budget. Highways and other programs consumed approximately 21%, and the remainder was spent on debt service. All discretionary funds available to the MTA and not currently programmed for bus operations were being used to fund other statutory obligations and responsibilities.

[5] Respondents' own expert witnesses conceded in the district court that no admissible evidence existed to contradict the MTA's testimony that it could not fund further improvements of bus service.

The District Court Ignored This Court's Decisions Requiring Consent Decrees to be Construed as Contracts and Limiting Federal Court Interference With Discretion Committed to State Agencies. That court disregarded this Court's decisions holding that consent decrees are to be construed as contracts, not solely as judicial decrees. *ITT Continental Baking Co.*, 420 U.S. at 236-37; *Armour & Co.*, 402 U.S. at 681-82. It also ignored the holdings of this Court forbidding federal courts to substitute judicial discretion for state or local governments' discretion and from mandating conduct when no constitutional violation had been adjudicated. *Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367, 112 S. Ct. 748, 116 L. Ed. 2d 867 (1992); *Milliken v. Bradley*, 433 U.S. 267, 97 S. Ct. 2749, 53 L. Ed. 2d 745 (1977).

Without explanation, the district court adopted Mr. Bliss' interpretation of the load factor targets and rejected the uncontradicted testimony before it that such goals are not absolutes in the transit industry. That court relied only on the evidence which had been presented only by declarations and exhibits to Mr. Bliss and not on the up-to-date testimony and documentary evidence offered to the district court. The proceedings before Mr. Bliss did not include evidence of intent of the parties.

The district court ignored the MTA's evidence that it could not find funds to operate buses beyond those required to implement its own LFRP while simultaneously meeting the statutory conditions precedent with which it had to comply; it disregarded the MTA's

evidence that enforcement of Mr. Bliss' "order" imperiled the MTA's existing and future funding.[6]

The district court modified Mr. Bliss' "order" by slightly reducing the number of buses that the MTA was mandated to purchase and remanded one issue to Mr. Bliss; in all other respects the court "affirmed" Mr. Bliss'

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[6] Among the many state and federal transportation and environmental statutes and regulations with which the MTA is required to comply are the following: 23 U.S.C. §§ 103-105 (establishment of eligibility and various approvals required for expenditure of National Highway System funds); 23 U.S.C. § 134 (regional transportation planning process requirements and requirements for expenditure of funds in a Transportation Improvement Program); 23 U.S.C. § 149 (sets eligible uses of Congestion Mitigation and Air Quality Improvement Program funds); 49 U.S.C. § 5303, et seq. (establishing a regional transportation planning process and setting criteria to be used in the process; stating requirements for expenditure of funds); 42 U.S.C. §§ 4321-4347 (National Environmental Policy Act); 49 U.S.C. § 5303, et seq. (reallocation of the MTA's resources cannot be undertaken without the Southern California Association of Governments' determination that such reallocation will not worsen the South Coast Air Basin's air quality; new expenditures also require approval of the Federal Highway Administration, the Federal Transit Administration and the Environmental Protection Agency); 23 U.S.C. § 134(h)(6); 49 U.S.C. § 5304(b), (c). Additional statutes require the MTA to provide public notice and allow the public a reasonable opportunity to comment on new purchases and any shift in funds to buses from other programs. 49 U.S.C. § 5304(d); Cal. Pub. Util. Code § 130106. Still other statutes set other statute and regulatory hurdles to be crossed before fleet expansion could be undertaken by the MTA. *E.g.*, Cal. Pub. Util. Code § 130001(b); 42 U.S.C. § 4321, et seq. (National Environmental Policy Act); 23 C.F.R. § 771.105; 42 U.S.C. § 7410 (Clean Air Act).

"order" as if it were reviewing an order of a federal magistrate judge serving as special master.

The Court of Appeals Affirmed the District Court and Failed to Follow This Court's Decisions. Petitioners appealed. The case was orally argued and submitted on May 2, 2000. On April 27, 2001, the Court of Appeals ordered the parties to file supplemental briefs addressing the impact of *Alexander v. Sandoval*, 532 U.S. 275, 121 S. Ct. 1511, 149 L. Ed. 2d 517 (2001) (curtailing private civil rights actions alleging disparate treatment of minorities) and two cases decided by the Seventh Circuit. The majority and dissenting opinions were filed on August 31, 2001, without mentioning any of the cases that the parties briefed in response to the appellate court's order.

The majority opinion of the court affirmed the district court without responding to the issues presented to that court which are presented here. Despite petitioners' discussion of *ITT Continental Baking* and *Armour & Co.*, the majority held that the Decree should be construed only as a judgment. According to the majority opinion, federalism concerns evaporated because the MTA supposedly consented to whatever interpretation of the Decree that Mr. Bliss chose to impose and likewise supposedly consented to his assuming the powers of a federal jurist.

The majority opinion concludes the MTA's impending loss of State and federal funding caused by the district court's mandatory injunction is of no significance because its loss of funding would not violate the funding statutes:

> [T]he federal and state laws to which MTA refers are simply funding provisions with which MTA *may* choose to comply. The reward for compliance is state and federal funding. However, failure to follow the requirements of the funding mandates is not a violation of the law. At most, it might disqualify MTA from entitlement to receive funds. MTA's compliance with the district court's order would no more violate federal law than would a state legislature's decision to lower the statutory drinking age below twenty-one in spite of the federal law that conditions receipt of federal funds on a drinking age of twenty-one or older. [Citations omitted.] The state might lose federal highway funds under federal law, but it would not be in violation of that law. Thus, the district court did not abuse its discretion.

263 F.3d at 1051. (Emphasis in original.)

That opinion never explains how the MTA can obey the courts' mandates without the essential funding to do so, nor why the MTA's inability to comply with statutory mandates is not itself a violation of law. Although the MTA called *ITT Continental Baking Co.* and *Armour & Co.* to the Court of Appeals' attention, the panel failed to follow or even mention those cases.

The majority opinion cites *Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367, 378, 112 S. Ct. 748, 116 L. Ed. 2d 867 (1992), to support its conclusion that the Decree should be interpreted only as a judgment. (App. A at

13a.) The court's reliance on *Rufo* for that point is misplaced.[7] In *Rufo*, the issue was whether that consent decree was subject to modification under Rule 60(b), Federal Rules of Civil Procedure; the consent decree had been entered after the jail conditions attacked had been adjudicated unconstitutional.

The Court of Appeals' Opinion Cannot Be Reconciled with this Court's Decisions. The courts below ignored the MTA's evidence explaining the source and meaning of the load factor targets' language used in the Decree. The Ninth Circuit simply repeated the district court's conclusion (adopting Mr. Bliss' interpretation of the terminology) that the load factor targets "set out a mathematically precise method of measuring bus overcrowding and a detailed schedule of load factor targets that were to be met by specific dates." (App. A at 14a.) No evidence was before Mr. Bliss or the lower courts to sustain those conclusions. Because this Court requires consent decrees to be interpreted as contracts for enforcement purposes, the intention of the parties in using the load factor target terminology in the Decree is crucial. The MTA unquestionably intended to use the terminology as it was used in the transit industry. The record contains no other evidence of the intent of the parties.

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[7] However, *Rufo* is directly relevant on a different point: "Federal courts may not order States or local governments, over their objection, to undertake a course of conduct not tailored to curing a constitutional violation that has been adjudicated." [Citation omitted.] 502 U.S. at 389.

Like the district court, the Court of Appeals disregarded the substantial, uncontradicted evidence presented by the MTA establishing that it had no bus-eligible resources to operate a bus fleet expanded beyond its own remedial plan. Instead, the majority concluded that Mr. Bliss' factual finding that the MTA had not exhausted all sources of revenue was not clearly erroneous. Neither Mr. Bliss nor the courts below identified or quantified such funding sources or decided how any such financial resources would be sufficient to fulfill the judicial mandates and the MTA's statutory obligations.

The courts below failed to recognize that the data upon which Mr. Bliss reached his conclusions were out of date when the district court heard the case. The lower courts prejudicially erred in relying on the stale evidence and ignoring the MTA's abundant evidence proving that it was in compliance with the Decree as correctly construed. By the time the Ninth Circuit decided the case, the evidence before Mr. Bliss was ancient transit history. Like the district court, the Court of Appeals relied on Mr. Bliss' findings and conclusions as if they had been timely made by a federal judge correctly construing the Decree and relying on current evidence.

The majority opinion accepted the district court's erroneous conclusion that the Decree gave Mr. Bliss the equitable powers of a federal judge because the inartful settlement agreement embodied in the Decree gave him authority to resolve disagreements. (App. A at 17a.)[8] It

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[8] Of course, he could resolve disputes by helping the parties reach an agreement or by recommending a proposed

rejected the MTA's contention that Mr. Bliss did not and could not have the powers of a federal judge invoking a quasi-estoppel theory based on the MTA's erroneously seeking a temporary restraining order from Mr. Bliss to forestall a threatened strike years ago. (App. A at 17a-18a.) The MTA could not confer on Mr. Bliss federal equitable power by its former lawyers' mistake. No one can confer federal judicial powers on any person in private law practice.

Contrary to this Court's directions in *Youngberg v. Romeo*, 457 U.S. 307, 323, 102 S. Ct. 2452, 73 L. Ed. 2d 28 (1982), neither the district court nor the Court of Appeals gave the slightest deference to the expertise of the MTA in managing its extremely complex integrated public transportation systems. Those courts also ignored *Bell v. Wolfish*, 441 U.S. 520, 562, 99 S. Ct. 1861, 60 L. Ed. 2d 447 (1979) (federal courts cannot second guess expert administrators on matters on which they are better informed, nor can they intrude into agencies' management of their affairs, except to cure federal statutory or constitutional violations). Neither the courts below nor Mr. Bliss has had any experience or expertise in managing a major public transportation system.

Even when federal courts have undertaken remedial decrees after a violation of constitutional rights has been adjudicated, compliance with judicial decrees has not been made absolute. Judicial inquiry is limited to ascertaining whether unlawful conduct has been "eliminated

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order to the district court. *E.g.*, Rule 53, Federal Rules of Civil Procedure.

to the extent practicable." *Freeman v. Pitts*, 503 U.S. 467, 492, 112 S. Ct. 1430, 118 L. Ed. 2d 102 (1992) (quoting *Board of Educ. of Oklahoma City Public Schools v. Dowell*, 498 U.S. 237, 249-50, 111 S. Ct. 630, 112 L. Ed. 2d 715 (1991). Compliance with the district court's mandatory injunction, affirmed by the Court of Appeals, is not practicable because the MTA can neither obtain the prior approvals mandated by statute nor can it fund the courts' mandates.

The majority opinion never mentions *Rizzo v. Goode*, 423 U.S. 362, 378-80, 96 S. Ct. 598, 46 L. Ed. 2d 561 (1976) (considerations of federalism require reversal of a lower court's remedial order revising the internal operations of a state or local agency in absence of extraordinary circumstances; federal courts must respect state governments' wide latitude in conducting their own internal affairs). No such extraordinary circumstances existed in this case.

The injunction is excessively intrusive. The lower courts disregarded the fact that the Decree specifically gives the MTA exclusive discretion in deciding how to meet load factor goals, and they ignored the constraints imposed by this Court on federal courts to avoid collisions with constitutionally required separation of powers and with established federalism principles. Running complex public transportation systems, like running a prison, "is an inordinately difficult undertaking that requires expertise, planning, and the commitment of resources, all of which are peculiarly within the province of the legislative and executive branches of government." *Turner v. Safley*, 482 U.S. 78, 84-85, 107 S. Ct. 2254, 96 L. Ed. 2d 64 (1987).

REASONS FOR GRANTING THE WRIT

This case is singularly important to the State of California, the County of Los Angeles, the MTA and to millions of persons who depend upon the MTA's public transportation facilities and services.

The Ninth Circuit's opinion cannot be reconciled with this Court's decisions sharply limiting federal judicial intrusion into the affairs of state and local governments and their agencies absent an adjudicated constitutional or federal statutory violation.

By failing to follow *ITT Continental Baking Co.*, 420 U.S. 223, and *Armour & Co.*, 402 U.S. 673, the Ninth Circuit has placed itself in conflict with *Lamphere v. Brown University*, 875 F.2d 916, 921 (1st Cir. 1989); *EEOC v. New York Times Co.*, 196 F.3d 72, 78 (2d Cir. 1999); *Harris v. City of Philadelphia*, 137 F.3d 209, 212 (3d Cir. 1998); *Johnson v. Robinson*, 987 F.2d 1043, 1046 (4th Cir. 1993); *United States v. Michigan*, 940 F.2d 143 (6th Cir. 1991); *Ahern v. Board of Education of City of Chicago*, 133 F.3d 975, 981 (7th Cir. 1998); *Musso v. University of Minnesota*, 105 F.3d 409, 411 (8th Cir. 1997); and *United States v. Western Electric Co.*, 894 F.2d 430, 435 (D.C. Cir. 1990).

Unless these errors are corrected by this Court, the MTA will be bound to adhere to the Court of Appeals' prejudicially erroneous decision that the Decree required it to meet the standee reduction goals precisely every day on every line – an impossible goal to which the MTA never agreed – and to do so by buying more buses than the Decree obligated it to purchase and without the prior approvals and funding necessary to operate the MTA's multi-modal transportation systems.

The Decree provides for its own termination if the MTA is in compliance with the Decree. (App. F at 185a.) If not overturned by this Court, the MTA is wrongfully forced into noncompliance, thereby threatening it with continuing intrusive management by Mr. Bliss and by the federal courts. Unless this Court in exercise of its supervisory powers overturns the Ninth Circuit, that court's disobedience to this Court's decisions will be uncorrected and the intercircuit conflict will persist.

The financial pernicious anemia imposed on the MTA by the errors of the courts below threatens its existence as an agency capable of meeting its statutory obligations and the transportation needs of millions of people dependent on the MTA's systems, including bus riders.

CONCLUSION

For all of these reasons, Petitioners respectfully request that the Petition be granted.

Respectfully submitted,

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